

AG Contract No. KR01-0326TRN
ADOT ECS File No. JPA 01-37
Project: Price Freeway
TRACS No.: H 3876 01C
Initiator Change Order #123
Section: Price Road
Frontage Road (Right Lane Decel)

**AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
PRICE WARNER PARTNERS, L.L.C.**

THIS AGREEMENT is entered into 18 April, 2001, pursuant to the Arizona Revised Statutes, Section 28-401, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the PRICE WARNER PARTNERS, L.L.C., an Arizona limited liability company (the "Developer").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Developer has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.

3. In conjunction with the State's ongoing construction of the Price Freeway, the Developer requests the State design and construct certain improvements associated with the Developer's primary access points to the commercial facility on the south-bound frontage road of Price Freeway, located at the southwest corner of Price Road and Warner Road, herein referred to as "the Project." On behalf of the Developer, the State agrees to design, incorporate Project plans by Change Order to the State's existing construction contract and construct the Project, all at the Developer's expense, estimated at \$26,931.08, as shown on Exhibit "A", attached hereto and made a part hereof.

4. Nothing herein shall be construed to impose an obligation on the State in any way, in the event the Developer does not fund the proposed Improvements.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The Developer will:

a. Upon execution of this agreement and receipt of an invoice, remit to the State, \$26,931.08, for the estimated cost of design, construction and twenty percent (20%) for the State's estimated cost of construction engineering and administration of the Project. Project costs are as shown on Exhibit "A".

b. And does hereby designate the State as authorized agent for the design, construction and construction engineering and administration of the Project.

c. Review all design documents in connection with the proposed improvements and provide written comments to the State.

d. Be responsible for the actual costs of design, construction, construction engineering and administration of the Project. If additional funds are required, prior to the original funds being drawn below \$1,000.00, and upon notification or receipt of an invoice from the State, deposit such sums necessary to cover expenses the State estimates it will incur to complete the construction of the Project.

e. Be responsible for any design or contractor claims for extra compensation due to delays or whatever reason attributable to the Developer and any liability which may result, with the exception of any negligence or willful conduct on the part of the State.

f. Upon completion and acceptance of the Project by the State on behalf of the parties hereto, provide maintenance to the Project, outside State's right of way, except for light poles, fixtures or other items which are covered or are currently being incorporated into the Master Maintenance agreement with the City of Tempe.

g. Agree to use its best efforts to complete the replacement of the Salt River Project (SRP) irrigation pipe line work prior to the State's commencement of construction of the Project. If such replacement is not completed by the Developer, the State will proceed with the Project and the Developer shall solely be responsible for the replacement of irrigation piping.

2. The State will:

a. Upon execution of this agreement, invoice the Developer \$26,931.08, for the estimated cost of design and construction of the Project, which includes twenty percent (20%) for the State's estimated cost of construction engineering and administration of the Project. Project costs are as shown on Exhibit "A".

b. And does hereby agree to prepare to State standards design plans, specifications and other such documents required for construction of the Project on behalf of the Developer, incorporate Developer's review comments as appropriate and include any necessary documentation in connection with the proposed improvements, including but not limited to the following:

Access Improvement Plans
Utility Clearance Letters

c. Upon concurrence of the parties herein, construct the Project on behalf of the Developer, administer same and make all payments to the contractor with the funds deposited by the Developer. Be responsible for any design or contractor claims for extra compensation attributable to the State.

d. At no time be considered the owner of, or locator for the SRP irrigation pipe line work. If the replacement of the SRP irrigation pipe line work is not completed by the Developer prior to the State's need to complete its freeway construction project, the State will proceed with the Project and shall not be responsible for the replacement of the SRP irrigation pipe line work.

e. Notify the Developer if additional funds are required prior to the original funds being drawn below \$1,000.00. Invoice the Developer such sums necessary to cover expenses the State estimates it will incur to complete the construction of the Project.

f. Upon completion, approve and accept the Project on behalf of the parties hereto and invoice or return all unused funds to Developer.

g. Upon completion of the State's construction of the Price Freeway and the Project herein described, amend the Master Maintenance Agreement with the City of Tempe to provide for maintenance of the frontage roads outside the State's control of access.

h. Request the Developer vacate its work to perform replacement of the SRP irrigation pipe or other related work, if the State determines the Project will adversely impact the timely or successful completion of the State's project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability for the Project under this agreement, with the exception of any negligence or willful conduct on the part of the State. The Developer assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims, in each case to the extent the Project is constructed in accordance with the plans approved by the Developer. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Developer and that the Developer hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Developer, any of its agents, officers and employees, or any of its independent contractors, in each case to the extent the Project is constructed in accordance with the plans approved by the Developer. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in full force and effect until completion and acceptance of the Project by the State and final payment from or reimbursement to the Developer has been made.

3. Should the Developer fail to fulfill the obligations set forth in this agreement or withdraw its proposed plans for whatever reason, the Developer shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for Developer's failure or cancellation is due to the State's failure to comply with its obligations thereunder.

4. The Developer may cancel the agreement prior to the State's notice to proceed to the contractor, (signing/acceptance of the Change order and amount), if the cost of the Project, including 20% for the State, exceeds the amount set forth in II.1.a. and II.2.a. by fifteen percent (15%) or greater. The Developer shall be responsible for all costs incurred by the State up to the time of cancellation, with the exception of any negligence or willful conduct on the part of the State.

5. Except as otherwise expressed and provided for in the agreement, the Developer will pay all costs of whatever nature related to the Project and the State will not incur or bear any costs what so ever.

6. This agreement shall become effective upon signature of the parties hereto.

7. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

8. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

9. In the event of any controversy between the Developer and the State which may arise out of this agreement, regardless of amount or subject, the parties hereto agree to abide by binding arbitration pursuant to in A.R.S. Section 12-1518.

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007

Price Warner Partners, L.L.C.
Attn: Randy Monroe, Director of Design/Construction
1707 E. Highland, Suite 100
Phoenix, AZ 85016

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

PRICE WARNER PARTNERS, L.L.C., an
Arizona limited liability company

Kitchell Development Company
its Manager and Member

By: 
RANDY MONROE
Its: Director of Design / Construction

STATE OF ARIZONA
Department of Transportation

By: 
DANIEL S. LANCE, P. E.
Deputy State Engineer

RESOLUTION

BE IT RESOLVED on this 7th day of March 200, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Price Warner Partners, L.L.C., for the purpose of defining responsibilities of the Developer and the State with regard to the design and construction of certain improvements associated with the Developer's primary access points to the commercial facility on the south-bound frontage road of Price Freeway

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contractor Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

EXHIBIT A - PAGE 1 of 2
SUMMARY OF COSTS DUE TO ADOT FROM KITCHELL
FOR PRICE & WARNER DECEL LANE AND TURNOUT

Total Design Cost	\$	7,867.24
Total Pulice Cst Cost	\$	15,886.53
20% of Const Cost for ADOT Eng & Admin	\$	3,177.31

TOTAL DUE TO ADOT	\$	26,931.08
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EXHIBIT A - PAGE 2 of 2

PULICE CONSTRUCTION COST DETAIL

BID ITEM ADJUSTMENTS:

#	DESCRIPTION	UNIT	NET QUANTITY		UNIT PRICE	TOTAL
			ADJUSTMENT			
3030022	AGGREGATE BASE, CLASS 2	M3	56		\$17.00	\$ 950.90
4010010	PORTLAND CEMENT CONCRETE PAVEMENT (250 MM)	M2	185		\$26.00	\$ 4,807.40
4090005	ASPHALTIC CONCRETE (MISC STRUCTURAL)	MTON	-2		\$24.00	\$ (51.32)
5010271	PIPE, CORRUGATED METAL (150 MM IRRIGATION SLEEVE)	M	12		\$45.00	\$ 540.00
6070041	SIGN POST (P-1) (PERFORATED) (SINGLE)	M	2		\$16.00	\$ 32.00
6070046	FOUNDATION FOR SIGN POST (P-1) (PERFORATED)	EA	2		\$80.00	\$ 160.00
6080003	REGULATORY, WARNING, OR MARKER SIGN PANEL W/TYP III/IV SHEET	M2	2		\$130.00	\$ 260.00
7040003	PAVEMENT MARKING (WHITE SPRAYED THERMOPLASTIC) (1.52MM)	M	42		\$0.55	\$ 23.21
7042031	PRIMER-SEALER FOR PCCP THERMOPLASTIC STRIPING	M	42		\$0.25	\$ 10.55
7042051	REMOVAL OF CURING COMPOUND FROM PCCP	M	42		\$0.25	\$ 10.55
7050023	PAVEMENT MARKING, PREFORMED, TYPE 1, SINGLE ARROW	EA	2		\$110.00	\$ 220.00
7050026	PAVEMENT MARKING, PREFORMED, TYPE 1, LEGEND (ONLY)	EA	1		\$110.00	\$ 110.00
7320060	ELECTRICAL CONDUIT (62MM) (PVC)	M	1		\$11.00	\$ 11.00
9080001	CONCRETE CURB (C-05.10) (TYPE A)	M	-5		\$18.00	\$ (82.80)
9080086	CONCRETE CURB AND GUTTER (DETAIL A)	M	12		\$16.00	\$ 195.20
9080133	CONCRETE VALLEY GUTTER AND APRONS	M2	118		\$42.00	\$ 4,972.80
9080201	CONCRETE SIDEWALK (C-05.20)	M2	1		\$16.00	\$ 10.56
9080300	CONCRETE SIDEWALK RAMP (C-05.30) (TYPE 3)	EA	2		\$350.00	\$ 700.00
9080301	CONCRETE DRIVEWAY (C-05.20)	M2	-29		\$30.00	\$ (870.00)
			Bid Item Subtotal		\$ 12,010.04	

OTHER ADDITIONAL WORK (see Pulice detail sheets):	Other Work Subtotal	\$ 3,876.49
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- 1) Modifications to catch basin
- 2) additional PCCP hand work
- 3) additional grading work
- 4) modification to schedule and work sequence to accommodate Kitchell's work
- 5) extra survey

Total Pulice Change Order Cost	\$ 15,886.53
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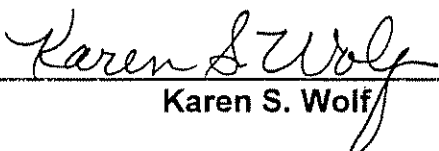
CERTIFIED COPY OF RESOLUTION

I, Karen S. Wolf, do hereby certify that I am the duly elected, qualified and acting Corporate Secretary of Kitchell Development Company and that the following is a true copy of a resolution adopted by Action of Consent of the Board of Directors of said corporation on the 2nd day of April 2001.

RESOLVED that Randall L. Monroe, Director of Design/Construction of said corporation, be and is hereby authorized and directed to execute documents and conduct business on behalf of said corporation as Manager/Member of Price Warner Partners, L.L.C.

and that said resolution has not, since its adoption, been altered, modified or repealed and is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto signed my name as Corporate Secretary this 2nd day of April 2001.



Karen S. Wolf

SAMPLE SIGNATURE:



Randall L. Monroe

APPROVED

Kitchell Development Company
Secretary for Development
notarized to